

Union Calendar No. 343

104TH CONGRESS
2^D Session

H. R. 2391

[Report No. 104-670]

A BILL

To amend the Fair Labor Standards Act of 1938
to provide compensatory time for all employees.

JULY 11, 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 1995

Mr. BALLENGER introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities

JULY 11, 1996

Additional sponsors: Mr. GOODLING, Mr. FAWELL, Mr. KNOLLENBERG, Mr. NORWOOD, Mr. GREENWOOD, Mr. BURR, Mr. GUNDERSON, Mr. HERGER, Mr. TAYLOR of North Carolina, Mr. BLILEY, Mr. ROHRABACHER, Mr. CUNNINGHAM, Mr. BARRETT of Nebraska, Mr. McKEON, Mr. SOUDER, Mr. PETRI, Mr. McINTOSH, Mr. GRAHAM, Mr. HUTCHINSON, Mr. INGLIS of South Carolina, Mr. KIM, Ms. PRYCE, Mr. SOLOMON, Mr. SHADEGG, Mr. STENHOLM, Mr. SHAYS, Mrs. MYRICK, Mr. SAM JOHNSON of Texas, Mr. CALVERT, Mr. FIELDS of Texas, Mr. HAYWORTH, Mr. MILLER of Florida, Mr. FUNDERBURK, Mr. WELDON of Florida, Ms. GREENE of Utah, Mr. COBURN, Mrs. JOHNSON of Connecticut, Mrs. FOWLER, Ms. DUNN of Washington, Ms. MOLINARI, Mr. PAXON, Mr. DORNAN, Mr. HORN, Mr. SALMON, Mr. MANZULLO, and Mr. EHLERS

JULY 11, 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on September 21, 1995]

A BILL

To amend the Fair Labor Standards Act of 1938 to provide
compensatory time for all employees.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Working Families Flexi-*
5 *bility Act of 1996”.*

6 **SEC. 2. COMPENSATORY TIME.**

7 *Subsection (o) of section 7 of the Fair Labor Standards*
8 *Act of 1938 (29 U.S.C. 207) is amended—*

9 *(1) by striking paragraphs (1) through (5) and*
10 *inserting the following:*

11 *“(1) An employee may receive, in accordance with this*
12 *subsection and in lieu of monetary overtime compensation,*
13 *compensatory time off at a rate not less than one and one-*
14 *half hours for each hour of employment for which overtime*
15 *compensation is required by this section.*

16 *“(2) An employer may provide compensatory time*
17 *under paragraph (1) only—*

18 *“(A) pursuant to—*

19 *“(i) applicable provisions of a collective*
20 *bargaining agreement, memorandum of under-*
21 *standing, or any other agreement between the*

1 *employer and representatives of such employees,*
2 *or*

3 “(ii) *in the case of employees who are not*
4 *represented by a collective bargaining agent or*
5 *other representative designated by the employee,*
6 *an agreement or understanding arrived at be-*
7 *tween the employer and employee before the per-*
8 *formance of the work if such agreement or under-*
9 *standing was entered into knowingly and volun-*
10 *tarily by such employee;*

11 “(B) *in the case of an employee who is not an*
12 *employee of a public agency, if such employee has af-*
13 *firmed, in a written or otherwise verifiable statement*
14 *that is made, kept, and preserved in accordance with*
15 *section 11(c), that the employee has chosen to receive*
16 *compensatory time in lieu of overtime compensation;*
17 *and*

18 “(C) *if the employee has not accrued compen-*
19 *satory time in excess of the limit applicable to the*
20 *employee prescribed by paragraph (5).*

21 *In the case of employees described in subparagraph (A)(ii)*
22 *who are employees of a public agency and who were hired*
23 *before April 15, 1986, the regular practice in effect on such*
24 *date with respect to compensatory time off for such employ-*
25 *ees in lieu of the receipt of overtime compensation, shall*

1 *constitute an agreement or understanding described in such*
 2 *subparagraph. Except as provided in the preceding sen-*
 3 *tence, the provision of compensatory time off to employees*
 4 *of a public agency for hours worked after April 14, 1986,*
 5 *shall be in accordance with this subsection. An employer*
 6 *may provide compensatory time under paragraph (1) to an*
 7 *employee who is not an employee of a public agency only*
 8 *if such agreement or understanding was not a condition*
 9 *of employment.*

10 “(3) *An employer which is not a public agency and*
 11 *which provides compensatory time under paragraph (1) to*
 12 *employees shall not directly or indirectly intimidate,*
 13 *threaten, or coerce or attempt to intimidate, threaten, or*
 14 *coerce any employee for the purpose of—*

15 “(A) *interfering with such employee’s rights*
 16 *under this subsection to request or not request com-*
 17 *pensatory time off in lieu of payment of overtime*
 18 *compensation for overtime hours; or*

19 “(B) *requiring any employee to use such com-*
 20 *pensatory time.*

21 “(4)(A) *An employee, who is not an employee of a pub-*
 22 *lic agency, may accrue not more than 240 hours of compen-*
 23 *satory time.*

24 “(B)(i) *Not later than January 31 of each calendar*
 25 *year, the employee’s employer shall provide monetary com-*

1 *pen- sation for any compensatory time off accrued during the*
2 *pre- ceding calendar year which was not used prior to De-*
3 *cem- ber 31 of the preceding year at the rate prescribed by*
4 *para- graph (6). An employer may designate and commu-*
5 *nicate to the employer's employees a 12-month period other*
6 *than the calendar year, in which case such compensation*
7 *shall be provided not later than 31 days after the end of*
8 *such 12-month period.*

9 *“(ii) The employer may provide monetary compensa-*
10 *tion for an employee's unused compensatory time at any*
11 *time. Such compensation shall be provided at the rate pre-*
12 *scribed by paragraph (6).*

13 *“(C) An employee may also request in writing that*
14 *monetary compensation be provided, at any time, for all*
15 *compensatory time accrued which has not yet been used.*
16 *Within 30 days of receiving the written request, the em-*
17 *ployer shall provide the employee the monetary compensa-*
18 *tion due in accordance with paragraph (6).*

19 *“(5)(A) If the work of an employee of a public agency*
20 *for which compensatory time may be provided included*
21 *work in a public safety activity, an emergency response ac-*
22 *tivity, or a seasonal activity, the employee engaged in such*
23 *work may accrue not more than 480 hours of compensatory*
24 *time for hours worked after April 15, 1986. If such work*
25 *was any other work, the employee engaged in such work*

1 *may accrue not more than 240 hours of compensatory time*
2 *for hours worked after April 15, 1986. Any such employee*
3 *who, after April 15, 1986, has accrued 480 or 240 hours,*
4 *as the case may be, of compensatory time off shall, for addi-*
5 *tional overtime hours of work, be paid overtime compensa-*
6 *tion.*

7 “(B) *If compensation is paid to an employee described*
8 *in subparagraph (A) for accrued compensatory time off,*
9 *such compensation shall be paid at the regular rate earned*
10 *by the employee at the time the employee receives such pay-*
11 *ment.*

12 “(6)(A) *An employee of an employer which is not a*
13 *public agency who has accrued compensatory time off au-*
14 *thorized to be provided under paragraph (1) shall, upon*
15 *the voluntary or involuntary termination of employment,*
16 *be paid for the unused compensatory time at a rate of com-*
17 *pensation not less than—*

18 “(i) *the average regular rate received by such*
19 *employee during the period during which the compen-*
20 *satory time was accrued, or*

21 “(ii) *the final regular rate received by such em-*
22 *ployee,*
23 *whichever is higher.*

24 “(B) *An employee of an employer which is a public*
25 *agency who has accrued compensatory time off authorized*

1 to be provided under paragraph (1) shall, upon the vol-
2 untary or involuntary termination of employment, be paid
3 for the unused compensatory time at a rate of compensation
4 not less than—

5 “(i) the average regular rate received by such
6 employee during the last 3 years of the employee’s em-
7 ployment, or

8 “(ii) the final regular rate received by such em-
9 ployee,
10 whichever is higher.

11 “(C) Any payment owed to an employee under this
12 subsection for unused compensatory time shall, for purposes
13 of section 16(b), be considered unpaid overtime compensa-
14 tion.

15 “(7) An employee—

16 “(A) who has accrued compensatory time off au-
17 thorized to be provided under paragraph (1), and

18 “(B) who has requested the use of such compen-
19 satory time,

20 shall be permitted by the employee’s employer to use such
21 time within a reasonable period after making the request
22 if the use of the compensatory time does not unduly disrupt
23 the operations of the employer.”; and

24 (2) by redesignating paragraphs (6) and (7) as
25 paragraphs (8) and (9), respectively.

1 **SEC. 3. REMEDIES.**

2 *Section 16 of the Fair Labor Standards Act of 1938*
3 *(29 U.S.C. 216) is amended—*

4 *(1) in subsection (b), by striking “(b) Any em-*
5 *ployer” and inserting “(b) Except as provided in sub-*
6 *section (f), any employer”; and*

7 *(2) by adding at the end the following:*

8 *“(f) An employer which is not a public agency and*
9 *which willfully violates section 7(o)(3) shall be liable to the*
10 *employee affected in the amount of the rate of compensation*
11 *(determined in accordance with section 7(o)(6)(A)) for each*
12 *hour of compensatory time accrued by the employee and*
13 *in an additional equal amount as liquidated damages re-*
14 *duced by the amount of such rate of compensation for each*
15 *hour of compensatory time used by such employee.”.*